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MICHAEL ROBAK, JR., C

IN THE

Supreme Court of the United States

No. 73-1086

October Term 1973

ALBERT MASCOLO and LOUIS EPIFANIA,

Petitioners.

v.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The Petitioners herein respectfully submit to the Court the opinion of the Ninth Circuit Court of Appeals, reported subsequently to the submission of their joint Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Directly contrary to the holding of the Second Circuit at bar, in *United States v. Watson*, —— F.2d —— (CA 9, December 12, 1973, 14 Cr.L. 1059 January 16, 1974), the Court of Appeals for the Ninth Circuit specifically held that a warrant is required

for a street arrest, in the absence of exigent circumstances. Said the Court:

> "Inspector Barbarick had probable cause to arrest appellant on the 17th of August, 1972. However, the arrest was not made until six days later—on the 23rd of August. There appears to be no reason for the failure to present the question to a detached magistrate to obtain an arrest warrant.
>
> 'The case of Warden v. Hayden, [387 U.S. 294] where the Court elaborated a 'hot pursuit' justification for the police entry into the defendant's house without a warrant for his arrest, certainly stands by negative implication for the proposition that an arrest warrant is required in the absence of exigent circumstances.' Coolidge v. New Hampshire, 403 U.S. 480. 'The warrant requirement is not an inconvenience to be somehow 'weighed' against the claims of police efficiency. It is, or should be, an important working part of our machinery of government, operating as a matter of course to check the well-intentioned but mistakenly over-zealous executive officers who are a part of any system of law enforcement.' Coolidge, supra at 481. The government in this case has shown no "exigent" circumstances which would justify not obtaining an arrest warrant during the six day interim period between the 17th of August and the day of the actual arrest. The arrest of the appellant was in violation of the 4th Amendment to the U.S. Constitution."

See pp. 30-34 of the Joint Petition herein.

CONCLUSION

The petition for a writ of certiorari should be granted. (*Rule 19, Rules of the Supreme Court of the United States*).

Dated: January 29, 1974

Respectfully submitted,

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